

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 01-23
Table of Allotments)	RM-9960
Digital Television Broadcast Stations)	
(Ontario, California))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 23, 2002

Released: July 29, 2002

By the Chief, Video Division, Media Bureau:

1. At the request of USA Station Group Partnership of Southern California (USA), the former licensee of station KFTR-TV (formerly KHSC-TV), NTSC Channel 46, Ontario, California,¹ the Commission has before it the *Notice of Proposed Rule Making*, 16 FCC Rcd 2276 (2001) (*Notice*), proposing the substitution of DTV Channel 29 for station KFTR-TV's assigned DTV Channel 47c.² Comments and reply comments were filed by USA. Community Television of Southern California (KCET), licensee of noncommercial educational television station KCET-TV, NTSC Channel *28, Los Angeles, California, Pappas Telecasting of Southern California (Pappas), permittee of station KIDN-TV, NTSC Channel 54, Avalon, California, Sunbelt Television, Inc. (Sunbelt), licensee of station KHIZ(TV), NTSC Channel 44, Barstow, California, and Venture Technologies Group, LLC (Venture) filed comments.³ Paxson Los Angeles License, Inc. (Paxson),

¹ The current licensee of KFTR-TV is Univision Partnership of Southern California, a subsidiary of Univision Communications, Inc. (Univision) pursuant to the grant of a transfer of control application TV (File No. BTCCT-20010123AAN) on May 21, 2001. While that application was pending, Univision filed comments supporting this proposal. For ease of reference, however, we will continue to refer to USA as the proponent of this proposal.

² As set forth in the *Notice*, USA claims that the DTV Channel 47 allotment does not permit KFTR-TV to replicate its analog station's service area. Additionally, the petitioner claims that operation on proposed DTV Channel 29 will eliminate first adjacent-channel interference to station KOCE-TV, Channel 48, Huntington Beach, California, and will reduce short-spacing to a co-channel Mexican DTV allotment at Tijuana.

³ Loma Linda Broadcasting Network, Inc. (LLBN) submitted a petition for an extension of time to file its comments late. LLBN claims that the delay in filing was due to the fact that its counsel was traveling during the week preceding the filing deadline and was unable to electronically submit the comments because of an "operational error" in the Commission's Electronic Comment Filing System (ECFS) system. We deny LLBN's petition, and dismiss its late-filed comments. We find that LLBN has not provided a sufficient justification as to why it could not have filed its comments in a timely fashion. First, it is the responsibility of the party submitting comments to ensure that the documents are delivered to the Commission on time. See *Gosnell, Arkansas, et al.*, MM Docket No. 87-619, 4 FCC Rcd 6170 (1989). Furthermore, LLBN's counsel's reliance on the claimed inoperability of the Commission's ECFS system is misplaced. In fact, the Commission has specifically excluded the filing of comments in broadcast

licensee of station KPXN(TV), San Bernardino, California, Univision Communications Inc. (Univision),⁴ KCET and Pappas filed reply comments.

2. KCET states that it does not oppose USA's substitution proposal, but urges the Commission to substitute DTV Channel 29c rather than DTV Channel 29 for DTV Channel 47c, so that station KFTR-DT will afford more interference protection to KCET-TV. KCET argues that its operations are entitled to protection from DTV operations on adjacent channels pursuant to Section 73.622(g)(1) of the Commission's Rules. Citing *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Further Notice of Proposed Rule Making, 11 FCC Rcd 6235 (1996), at ¶57, KCET explains that because interference from an upper-adjacent Channel DTV signal to reception of an NTSC station is related to the precise location of the DTV signal pilot carrier frequency, Section 73.622(g)(1) would require KFTR-DT to maintain a precise 5.082138 MHz+3 Hz frequency offset with the KCET visual carrier in order to prevent such interference. It further requests the Commission to condition the grant of USA's channel substitution request on reimbursing KCET for all reasonable upgrade expenses borne by it as a result of this proposal.

3. Pappas opposes the proposed channel substitution arguing that the public interest benefits accruing from this proposal are illusory or are insufficient to overcome the even greater benefits of leaving the Table of Allotments undisturbed. In this regard, Pappas' station, KIDN-TV, is authorized to operate on NTSC Channel 54 and Pappas submits that it will be required to migrate to a core channel by the end of the DTV transition period. Pappas contends that Channel 29 is presently the only core DTV channel available for its use with no significant impairment in service. However, if DTV Channel 29 is made available to KFTR-DT, Pappas states that the only remaining core channel for KIDN-DT would be Channel 47 which it claims will result in a significant loss of that station's coverage.

4. Pappas also argues that USA has failed to provide any evidence supporting the alleged benefits of its proposal. Although USA claims that its present DTV Channel 47 will preclude complete replication of the population currently receiving service from KFTR-TV and that DTV

allotment proceedings from electronic filing. See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998) and Section 1.49(f) of the Commission's Rules. Additionally, there is no public interest basis to accept LLBN's comments. Essentially, LLBN opposes the subject rulemaking proposal, in part, because it has a mutually exclusive application for a new LPTV station on NTSC Channel 29 at Banning, California, and, if DTV Channel 29 is allotted to Ontario as proposed, no substitute channel is available to it. However, LLBN's low power application is not entitled to protection against this proposal. See *Report and Order, In the Matter of Establishment of a Class A Service*, 15 FCC Rcd 6355, 6370-71 (2000), *clarified on recon.*, 16 FCC Rcd 8244, 8248 (2001). LLBN's remaining allegations have been raised by other parties to this proceeding and are addressed herein. Sunbelt also filed its comments late and they too will be dismissed. Basically, Sunbelt supports USA's proposal as it may seek the eventual reassignment of DTV Channel 47 to Barstow for its use. Nevertheless, Sunbelt's comments do not provide relevant information of decisional significance to this proceeding and will not be considered.

⁴ See footnote 1, *supra*.

Channel 29 will permit greater replication of its current NTSC service area, Pappas claims that USA's engineering statement compares the population served by KFTR-TV and that served by KFTR-DT operating on DTV Channel 29, but fails to compare the present analog service to KFTR-DT operating on DTV Channel 47 or to quantify the extent to which replication will not be achieved by operating on DTV Channel 47. This is significant, in Pappas' view, because no station is guaranteed 100 percent analog-to-digital replication, and each station is subject to having as much as 10 percent of its replicated service population lost to interference caused by other DTV stations.⁵ Absent a comparison between analog KFTR-TV and digital KFTR-DT on Channel 47, Pappas asserts that the Commission is unable to determine whether the loss of analog service population is more or less than the 10 percent and, therefore, decisionally significant.

5. Pappas also states that while USA claims that the proposed channel substitution will eliminate co-channel interference to KOCE-DT, Channel 48, Huntington Beach, an application has been filed to relocate the KOCE-DT transmitter which, if granted, would eliminate such interference to, and possibly achieve a greater degree of signal replication for, KFTR-DT on Channel 47.⁶ Pappas additionally argues that although USA claims that substituting DTV Channel 29 for Channel 47 will largely eliminate a short-spacing to a co-channel Mexican DTV allotment at Tijuana, that channel is an "unactivated" allotment, and that Mexico has apparently raised no objection on a short-spacing basis to the Commission's allotment of a Channel 47 at Ontario. Further, Pappas reasons that if the Mexican channel is vacant, there is no actual short spacing, but only the potential for short-spacing, and that the potential short-spacing can be eliminated by appropriately locating a transmitter when a station is built to operate on that channel at Tijuana. Pappas asserts that the Commission should be more concerned about protecting existing service to U.S. viewers than about eliminating a potential short-spacing to an inactivated Mexican DTV channel allotment. Finally, Pappas points out that providing out-of-core stations with the incentive to relinquish spectrum above Channel 51 could maximize the government's proceeds from an early auction of Channel 54 made possible only by holding Channel 29 available for KIDN-DT.⁷

6. As to the remaining commenters, Paxson supports Pappas's initial comments that USA has not justified that the proposed channel change is in the public interest. Univision, on the other hand, believes that none of the commenters opposing the proposal have demonstrated any reason why the instant channel substitution should not be approved.

7. In its responsive comments, USA contends that none of the opposing commenters refute

⁵ See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 13 FCC Rcd 7418, 7450 (1998).

⁶ See File No. BPEDT-19991101AKY. Venture also opposes USA's proposal on this ground. Moreover, Venture alleges that the proposed channel substitution would force KCET-TV to change its frequency control equipment to accommodate a frequency offset, an issue that has been raised by KCET itself.

⁷ Pappas asserts that the Commission could leave Channel 29 as an available future channel for KIDN-DT and ensure an earlier relinquishment of Channel 54 by KIDN-TV for auction bidders willing to pay a premium for valuable spectrum.

the substantial public interest benefits to be derived from this proposal, which include the prompt initiation of digital service and enabling KFTR-DT to better replicate its existing analog signal throughout its core service area.⁸ It claims that there is no legal authority for Pappas' assertion that such a channel substitution would only be warranted if the proponent is not able to serve at least 90 percent of the station's existing analog service area. USA also rejects Pappas' claim that it is seeking better treatment for its station than for other DTV stations, noting that the Commission favors enabling a station, to the extent that it is technically permissible, to implement a digital signal that matches or exceeds its established analog operations. USA maintains that no commenter disputes that the instant proposal will enable KFTR-DT to replicate more of its current NTSC service than it could with the station's existing digital allotment.⁹ Similarly, USA argues that adoption of its proposal will immediately eliminate predicted interference to over 18,000 people within the service area of noncommercial station KOCE-DT, and the commenters' claims that this interference will be resolved by the grant of KOCE-DT's pending modification application to change transmitter sites ignores the reality that that application may not be granted or that KOCE-DT may never actually move to another site.¹⁰ Finally, USA contends that its channel change proposal virtually eliminates KFTR-DT's short-spacing conflict with a vacant allotment in Tijuana, Mexico. In light of the Commission's precedent to protect vacant international allotments, USA believes that the elimination of an existing short-spacing is yet another compelling reason to adopt its proposal.

8. Pappas, in its reply comments, reiterates its opposition to the channel substitution proposal at Ontario. It rejects USA's contention that it cannot replicate the station's analog coverage on DTV Channel 47. In that regard, Pappas argues that when the KOCE-DT application is granted, there will be no impediment to USA applying for and obtaining authorization to improve its transmitting facilities on Channel 47. Under those circumstances, Pappas states that there is no reason to encumber Channel 29, cause additional (albeit permissible) interference to other stations, or to disrupt LLBN's plans to initiate a new UHF analog low power facility on NTSC Channel 29 at Banning, California.

⁸ USA states that it accepts KCET's request to designate the proposed allotment as DTV Channel 29c, rather than Channel 29, and that it will work with KCET to obtain the equipment necessary to enable KCET-TV to upgrade its facilities to maintain the necessary frequency tolerance pursuant to Section 73.622(g)(1) of the Commission's Rules.

⁹ USA also notes that KIDN-DT is merely a construction permit that is not eager to move to DTV Channel 47, should it become available as a substitute channel, due to the reduced coverage it would afford KIDN-DT. It argues that Pappas has no right to force KFTR-DT to stay on Channel 47, and the Commission should not deny an existing station the right to maintain or better its existing levels of service in order to enable an unbuilt station to select and reserve the use of a future allotment.

¹⁰ USA maintains that the key benefit of its proposal is that it will implement its digital service immediately and consistently with the Commission's goal of initiation of DTV service. It states that if it is forced to wait until KOCE-DT's application is approved, and the station is built and licensed, USA will have to delay several years before increasing power. Moreover, USA states that it will have to continue to protect KOCE-DT's allotted site until at least December 31, 2005, which will preclude an increase in USA's power until at least 2006.

9. Discussion. We have carefully reviewed all of the pleadings before us and, for the reasons that follow, we find that the public interest will be served by substituting DTV Channel 29c for DTV Channel 47c at Ontario. In reaching this conclusion, we find that the issues raised by Pappas with respect to preservation of spectrum for future potential uses are without merit and contrary to the Commission's goal of prompt establishment of DTV service. The presence or absence of a superior channel for Pappas to migrate to at sometime in the future, the potential future uses of channels by commenters such as Sunbelt, or the availability of alternative channels for displaced applicants such as LLBN are not sufficient reasons to deny USA's proposal. Similarly, Pappas offers no support for its argument to disfavor a substantial reduction in short-spacing to the co-channel Mexican DTV allotment because that channel is presently unoccupied. Furthermore, there is no basis to conclude that LLBN's application for a low power station on NTSC Channel 29 at Banning is entitled to any protection from USA's digital proposal.¹¹

10. Nor are we persuaded that additional questions exist concerning service areas affected by this channel-change proposal. In this regard, USA's proposal complies with City-Grade service and interference protection requirements, and is otherwise consistent with the Commission's technical standards. USA's proposed channel change will enable station KFTR-TV to shift its signal toward the more populated areas and increase digital service to the public in furtherance of the Commission's goals with respect to the establishment of digital television service. Moreover, it has the potential to reduce or eliminate interference to KOCE-DT and the short-spacing conflict to a vacant Mexican allotment.

11. We also conclude that DTV Channel 29 should be allotted with a "c" designation, which was inadvertently not proposed in the *Notice*. We expect, and USA has agreed to, engage in good faith efforts to negotiate with KCET to resolve any problems that might occur. We expect USA to meet the DTV operation standards and in doing so will consider the ramifications of the channel change on any NTSC television station. Accordingly, we conclude that it is unnecessary to so condition the grant of this channel substitution.

12. Conclusions and Ordering Clauses. We find that the public interest would be served by the substitution of DTV Channel 29c for DTV Channel 47c at Ontario, California, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates 34-13-37 N. and 118-03-58 W. Since the community of Ontario is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government has been obtained for this allotment. In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station KFTR-DT with the following specifications:

¹¹ See footnote 3, *supra*.

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
CA Ontario	29c	155	927	12,982

13. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 12, 2002, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Ontario, California	29c

14. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, Univision Partnership of Southern California, shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 29c in lieu of DTV Channel 47c for station KFTR-TV.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Alan E. Aronowitz, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

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